UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

LAKUAN RHYNE,

Defendant.

No. 15-CR-05 (NSR)
No. 18-CV-0361 (NSR)
ORDER AND OPINION

NELSON S. ROMÁN, United States District Judge

By Opinion and Order, dated May 21, 2018 (No. 18-CV-0361, ECF No. 16) (the "Order"), this Court denied Defendant, Lakuan Rhyne's ("Defendant" or "Rhyne") motion, pursuant to 28 U.S.C. § 2255, to vacate his conviction on the basis of ineffective assistance of counsel and to set aside his sentence as excessive. By motion, received by the Court's Pro Se Office on June 26, 2018, Defendant seeks a Certificate of Appealbility.

Upon review of the moving papers and the Order, the Court determines that Defendant has not made " a substantial showing of the denial of a constitutional right," such that a certificate of appealability will not be issued. 28 U.S.C. § 2253; see *Lucidore v. N.Y.S. Div. of Parole*, 209 F.3d 107, 111-12 (2d Cir. 2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)) (" a 'substantial showing' does not compel a petitioner to demonstrate that he would prevail on the merits, but merely that the issues involved in his case 'are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.' "); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). The Court further certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this judgment on the merits would not be taken in good faith, see *Coppedge v. United States*, 369 U.S. 438, 445 (1962) (" We consider a defendant' s good faith . . . demonstrated

Copies ~~mailed/faxed~~ 7/13/2018
Chambers of Nelson S. Román, U.S.D.J.

when he seeks appellate review of any issue not frivolous."); *Burda Media Inc. v. Blumenberg*, 731 F. Supp. 2d 321, 322-23 (S.D.N.Y. 2010) (citing *Coppedge* and noting that an appeal may not be taken in *forma pauperis* if the trial court certifies in writing that it is not taken in good faith). Defendant may still avail himself of the procedures for seeking a certificate from the court of appeals. See 28 U.S.C. §§ 2254 & 2255 (Rule 11); see, e.g., *United States v. Whitman*, 153 F. Supp. 3d 658, 659 (S.D.N.Y. 2015).

This constitutes the Court Opinion and Order.[1]

July 13, 2018
White Plains, New York

SO ORDERED:

NELSON S. ROMÁN

The Clerk of the Court requested to terminate the motions (15Cr.5-01 - Doc. 285; 18cv361 - Doc. 19).

[1]Following the filing of the notice of appeal, Defendant's appellate counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating that after careful review of the record there were no meritorious or nonfrivolous issues to be raised on appeal. (See ECF No. 260.)